No 545

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Supreme Court of the United States

OCTOBER TERM—1945.

GEORGE McMANUS,

Petitioner,

against

MARINE TRANSPORT LINES, INC.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WALTER X. CONNOR and
VERNON S. JONES,
Advocates for Respondent.

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STATEMENT.

Petitioner, a seaman, was awarded $50.00 for maintenance and $50.00 for cure on account of a disability due to accident lasting two weeks. This disability occurred after the end of the voyage of respondent's vessel, after petitioner had quit respondent's employ and, indeed, after he had found employment elsewhere and had quit that.

The district court found that the negligence count in the libel was without merit and dismissed it. However, it allowed $150.00 for the foregoing period of disability which the Circuit Court of Appeals, for the Second Circuit, reversed (149 F. 2d 969). With regard to this award, the Circuit Court said:

> "Under the authorities, the award of wages after the end of the voyage and in addition to maintenance cannot be supported. *Great Lakes S. S. Co.* v. *Geiger,* 261 Fed. 275 (6 C. C. A.); see also *Reed* v.

Canfield, Fed. Cas. No. 11,641, 20 Fed. Cas. 426 at 429; *Chelentis* v. *Luckenback S. S. Co.,* 243 Fed. 536, 538 (2 C. C. A.), aff'd 247 U. S. 372."

Relief Sought by Petitioner.

Petitioner concedes that the decision of the Circuit Court of Appeals, below, is in accord with decisions of other United States Circuit Courts of Appeals (Petition, Page 4). Nonetheless, he asks this court to grant a writ of certiorari so that it can later, by judicial decision, legislate a change in the law and require this respondent and other shipowners to pay seamen wages in addition to maintenance and cure during the period of disability. He does not offer any legal argument for this proposed change. He asks that the change be made for the reason that courts have legislated before and courts should be "fatherly and kindly" and that in any event he is asking for very little, which the employer could deduct from income for tax purposes.

The petitioner says that the district court, in awarding him $150 wages for one month, intended not to limit him to his strict legal rights but to award him something *ex gratia* because of a discretion which petitioner says should be inherent in admiralty courts.

The fact is that the district court did not have any such thought in mind. On the contrary, the district court intended to award petitioner only what he was strictly entitled to. It said (87):* "Now, I am sympathetic with the principle that in these cases seamen are wards of the court, but I am not disposed to give a seaman anything that I think he is not entitled to. I do think that he is entitled to something in this case, and I think that the most I can conscientiously allow him is $250, * * *"

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* References are to the pages of the record.

The Circuit Court of Appeals correctly decided that the libelant was not entitled to the two weeks' wages. The Circuit Court did not mention or discuss the question of whether a district court could award more to a seaman, because it correctly interpreted the district court's opinion that the district court was not attempting any such thing.

In any event, the petitioner's argument that he "deserves" some extra money as wages is without merit. The record will show that petitioner received more than his deserts. The district court did not believe his claim of negligence and dismissed it. He concedes now (Petition, Page 2) as he did in the circuit court that the dismissal was correct. He did not seek to review the dismissal in the Circuit Court of Appeals upon the respondent's appeal.

The Facts.

Petitioner was one of two engineers on a small tank vessel. He asserts that on a date which he fixed in his pleadings as August 1, 1942 (3), but which he changed on the trial to some later but unspecified day in August, 1942 (11, 12), a wooden bench, upon which he was standing, collapsed causing him to scratch his shin when he fell (12). Respondent's evidence showed that the bench did not collapse and that petitioner scratched his shin as he was stepping down from the bench (66-68). Petitioner received some treatment (15), but continued to stand his regular watches until August 29, 1942, the end of the trip, when he left the vessel (16), to enter the employment of another shipowner on the steamship *Cape Romano,* an ocean-going vessel (25, 86). He performed his duties on this vessel until September 17, 1942 (27), when he was denied further employment because it was found that he had a condition of the left shin which needed medical attention (18, 86). He obtained treatment

at a United States Marine Hospital from September 18, 1942 to September 30, 1942, when he was pronounced cured (86).

With regard to the negligence count, the court found as a fact that petitioner's injuries * * * "were not due or caused by the fault or want of care on the part of the respondent or to the unseaworthiness of the vessel with respect to the appliances which were furnished for use and accommodation of the libelant, nor by reason of the negligence of the respondent, its agents, officers and employees" (85).

The district court allowed petitioner $150 for his loss of wages during the period for which he was also allowed $50 maintenance (81). The court allowed these wages not on the theory that they were due as wages to the end of the voyage nor that they were due as compensatory damage because of negligence. The petitioner had already received his full wages to the end of the voyage. The district court specifically found that there was no right to indemnity and thus the wages were not allowed on this basis (85). The Circuit Court reversed this award (97, 98).

POINT I.

THE DENIAL OF WAGES BEYOND THE VOYAGE WAS CORRECT.

Apparently this is the second case in which a seaman has attempted to obtain wages in addition to his maintenance. In the first case this attempt was rejected. *Great Lakes Steamship Co.* v. *Geiger,* 261 Fed. 275.

In that case the Circuit Court of Appeals for the Sixth Circuit had presented to it the precise question now before this court. The district court had allowed wages beyond

the end of the voyage and the shipowner appealed. In dealing with the question, the circuit court said at page 277:

> "In the *Osceola* (1902) 189 U. S. 158, 175 23 Sup. Ct. 483, 487 (47 L. Ed. 760), Mr. Justice Brown, upon an elaborate review of the English and American authorities, announced the proposition, among others, that——
>
> > 'The vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.'
>
> "In view of the words 'at least', and considering other decisions, libelant contends that there is no settled rule as to the period of wage recovery and thus that courts of admiralty should, 'in the exercise of a sound discretion, give or withhold damages according to principles of equity and justice, considering all the circumstances of the case.' Respondent insists that under well-settled rules recovery after the termination of the voyage is absolutely forbidden. The District Court, without expressing 'final or definite opinion * * * as to the period during which a lake seaman is entitled to wages after an injury, concluded that an award of three months' wages was reasonable in view of all the circumstances.' We are accordingly urged to declare the applicable rule.
>
> "The phrase 'at least', in the extract quoted from the opinion in the *Osceola* case, was doubtless meant to apply both to liability for maintenance and cure (see *The Bouker No. 2* [C. C. A.] 241 Fed. at page 833, 154 C. C. A. 533) and to wages; but it was not, in our opinion, intended to suggest that wages beyond the termination of the voyage are recoverable in a case where the ship was not at fault in respect to the accident, nor remiss in its duty to furnish cure and

maintenance thereafter, unless possibly where the term of shipment extends beyond the termination of the voyage. The proposition quoted states a minimum, not a maximum, of liability. It is not without significance, as bearing upon the use of the phrase 'at least', that in *The Iroquois,* 194 U. S. 240, 24 Sup. Ct. 640, 48 L. Ed. 955 (about a year after the decision in *The Osceola*), in an opinion also by Mr. Joseph Brown, a substantial recovery of damages for failure to perform the ship's full duty with respect to surgical treatment was affirmed, although the ship was not responsible for the accident itself. In such recovery wages lost would naturally be a proper element of damages.

* * * * * *

"But, so far as we have seen, the decision in *The Osceola* has not been distinctly construed as extending to liability for wages beyond the termination of the voyage, except in case of the fault of the ship in the performance of some duty, or unless the seaman's contract extended beyond the end of the voyage. On the contrary, the Circuit Court of Appeals of the Seventh Circuit, apparently construes the *Osceola* Case as allowing wages only to the end of the voyage (*The Nyack,* 199 Fed. 383, 389, 118 C. C. A. 67), and the Circuit Court of Appeals of the Second Circuit, in *Chelentis* v. *Luckenbach S.S. Co.,* 243 Fed. 536, 538, 156 C. C. A. 234, L. R. A. 1913F, 991, states the rule that the recovery by a seaman injured in the service of the ship is limited to his wages to the end of the voyage and the expense of his maintenance and cure.

* * * * * *

"Our conclusion is that upon the record presented, libelant's right to wages is, as matter of law, confined to the end of the voyage, and that the award below was in this respect unwarranted." * * *

In *The Bouker No. 2,* 241 F. 831 (C. C. A. 2nd Circuit) the court reviewed the elements of maintenance and cure

and concluded that the right to maintenance and cure extended beyond the end of the voyage. However, the court did not allow any wages in addition to maintenance. The implications in the decision are that no such allowance is warranted.

In this connection, it should be noted that in *The Harvey B. Fiske,* 141 F. 188, cited by petitioner, the court said at page 191: * * * "No question arises as to his wages; they have been paid to the end of the voyage."

It should be observed that, in *Great Lakes Steamship Co.* v. *Geiger, supra,* the court construed the language of the Supreme Court in *The Osceola, supra,* and concluded that, when the court used the expression "at least", it was not implying that there was any liability for wages beyond the end of the voyage. By its decision in the *Calmar Steamship Corp.* v. *Taylor,* 303 U. S. 525, the Supreme Court confirmed that construction. The court observed at Page 528:

> "In *The Osceola supra,* this court reserved the point whether the duty of maintenance and cure extends beyond the duration of the voyage, and that question, so far as this Court is concerned, remains an open one."

The Court concluded at page 530:

> "* * * We can find no basis for saying that, if the disease proves to be incurable, the duty extends beyond a fair time after the voyage in which to effect such improvement in the seaman's condition as reasonably may be expected to result from nursing, care, and medical treatment. This would satisfy such demands of policy as underlie the imposition of the obligation. Beyond this we think there is no duty, at least where the illness is not caused by the seaman's service."

No wages were allowed to Taylor although, if they were part of the shipowner's obligation to him, the Supreme Court should have said so and awarded them. It must be concluded therefore, that the shipowner's duties as found by the Supreme Court did not include the payment of wages in addition to maintenance.

These conclusions stem from the early and classic decisions of *Harden* v. *Gordon*, Fed. Cas. No. 6047, and *Reed* v. *Canfield*, 20 Fed. Cas. page 426 Case No. 11641.

Judge Storey in the latter case described the limits of the shipowner's obligation of maintenance and said at page 529:

> "* * * The seaman is to be cured at the expense of the ship, of the sickness or injury sustained in the ship's service. It must be sustained by the party, while in the ship's service; and he is not to receive any compensation, or allowance for the effects of the injury. But so far, and so far only, as expenses are incurred in the cure, whether they are of a medical or other nature, for diet, lodging, nursing, or other assistance, they are a charge on, and to be borne by, the ship. The sickness or other injury may occasion a temporary or permanent disability; but that is not a ground for indemnity from the owners. They are liable only for expenses necessarily incurred for the cure; and when the cure is completed, at least so far as the ordinary medical means extend, the owners are freed from all further liability. They are not in any just sense liable for consequential damages. The question, then, in all such cases is, what expenses have been virtually incurred for the cure; not what might, under other circumstances, be incurred. The owner is not to respond for charity actually administered by others, but for expenses. He is not to pay what may remunerate the sufferer for his losses, or what in com-

> passion or humanity he might demand; but what the law has measured out as the limit of justice."
> * * *

These decisions are amply sufficient to require the denial of the petition.

CONCLUSION.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

Respectfully submitted,

Advocates for Respondent.

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